

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

MICHAEL MUEHE, ELAINE HAMILTON,  
CRYSTAL EVANS, and COLLEEN  
FLANAGAN, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

vs.

CITY OF BOSTON, a public entity,

Defendant.

Case No.: 1:21-cv-11080-RGS

**DECLARATION OF THOMAS P. MURPHY IN SUPPORT OF  
MOTION FOR ATTORNEYS' FEES AND COSTS**

I, Thomas P. Murphy, hereby declare:

1. I am a member in good standing of the Bar of the State of Massachusetts and a Senior Attorney at the Disability Law Center, Inc. ("DLC"), in Boston and Northampton, Massachusetts. I have been actively engaged in the practice of law since 1995. I am co-counsel for Plaintiffs and the members of the Plaintiff Class and am providing this declaration of counsel in support of the Plaintiffs' Motion for Attorneys' Fees and Costs. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to them.

2. DLC is a private non-profit organization, and the designated Protection and Advocacy ("P&A") system for people with disabilities in Massachusetts, pursuant to federal statutory authority. *See, e.g.*, 29 U.S.C. § 794e (persons with disabilities, including physical disabilities), 42 U.S.C. § 15001 (people with developmental disabilities), and 42 U.S.C. § 10801 (people with mental illness). DLC's core mission includes advocacy on issues of civil rights and public access for people with disabilities living in the community, as well as non-

discrimination in the provision of government services.

3. The Protection and Advocacy systems were created by Congress to provide independent advocates for people with disabilities in each state and territory. DLC's mandates expressly provide DLC with the federal authority to pursue legal, administrative, and other appropriate remedies to ensure enforcement of our constituents' federal and state rights. *See* 42 U.S.C. § 15043 (a)(2)(A)(i), 29 U.S.C. § 794e (f)(3). Pursuant to its federal mandates, DLC routinely conducts systemic investigations and advocates based upon the finding of those investigations. That advocacy comes in a variety of forms, including affirmative impact litigation.

4. DLC attorneys have represented individuals with disabilities in numerous systemic and class action cases, including: *Briggs, et al. v. Mas. Dep't of Corr., et al.*, No. 1:15-cv-40162 (D. Mass.) (involving access of deaf and hard of hearing prisoners to appropriate accommodations); *Disability Law Ctr. v. Mass. Dep't of Corr., et al.*, 960 F. Supp. 2d 271, 280-81 (D. Mass. 2012) (involving diversion from solitary confinement for prisoners with mental illness); *Sabbag, et al. v. Swift*, No. 1:01-cv-12211 (D. Mass.) (involving access to home-based private duty nursing services for children with severe disabilities); and *Rolland v. Cellucci*, 198 F. Supp. 2d 25 (D. Mass. 2002) (involving community placement and specialized services for individuals with intellectual and developmental disabilities in nursing facilities). DLC has also litigated many cases in Massachusetts state and federal courts involving physical access, such as *Berry v. City of Lowell*, 2003 WL 22050772 (D.Mass. 2003), *Pyramid Co. v. Architectural Barriers Board*, 403 Mass. 126 (1998), and *Hasbrouck v. MBTA*.

5. I graduated from Villanova University with a B.S. in Business Administration in 1992 and Boston University School of Law in 1995. I was admitted to practice law in

Massachusetts in December 1995. I have worked in the Civil Rights Division of the Massachusetts Office of the Attorney General and at the Massachusetts Commission Against Discrimination (“MCAD”). Then, after working in a private practice, I joined DLC in 2005.

6. I have been class counsel in the matters of *National Association of the Deaf, et al. v. Harvard University*, 377 F.Supp.3d 49 (D.Mass. 2019) and *National Association of the Deaf, et al. v. Massachusetts Institute of Technology*, 2019 WL 1409301 (D.Mass. 2019).

7. Beyond these class actions, I have represented individuals in employment and housing discrimination cases, as well as cases involving disability access in places of public accommodation and by public entities, before federal and Massachusetts courts and administrative agencies. I have litigated many civil rights and disability rights cases, including: *Cherry, et al. v. Hampton Properties, LLC*, No. 4:16-cv-40048 (D. Mass.); *Bratton v. CSX*, No. 07-11515-WGY (D. Mass.); *Greer v. Boston University*, No. 02-11898-MLW (D. Mass.); *Frank v. Brookside Condo Association* (Mass. Super. Ct.); *Jackman v. Securitas* (MCAD); *Devin v. Kindred Hospital* (MCAD); *Jones v. MBTA* (MCAD); *Shuster v. Great Barrington Rudolph Steiner School* (MCAD); *Zappala v. Monterosa of Stoneham* (MCAD); and *Albanese v. Co-Ri, Inc.* (MCAD). I am also engaged in structured negotiations on behalf of a proposed class in a matter involving improved access for individuals with disabilities. I have authored publications on disability rights and regularly train attorneys, advocates and individuals on disability rights, including programs at Massachusetts Continuing Legal Education (MCLE).

8. Other DLC attorneys who have worked on this case include Stanley Eichner. Attorney Eichner was the Director of Litigation at DLC until April 2019. He graduated with a Bachelor of Arts from Boston University in 1971, and with a J.D. from Washington University

School of Law in 1974. He then worked as a partner at the firm Taylor, Eichner, Hollander and Platke from 1974 to 1977, specializing in civil rights and labor law matters. He was a Senior Staff Attorney at Legal Services of Eastern Missouri from 1977 to 1983, working on complex law reform litigation in state and federal courts, notably as lead counsel in the matter of *Hensley v. Eckerhart*, 461 U.S. 424 (1983), before the U.S. Supreme Court. Attorney Eichner worked for the Commonwealth of Massachusetts as an Assistant Attorney General and Director of the Disability Rights Project at the Office of the Massachusetts Attorney General; as the Director of Disability Program Development at the Executive Office of Health and Human Services; and as General Counsel at the Executive Office of Elder Affairs. At DLC, he held the positions of Senior Staff Attorney, Executive Director, and throughout this case, Director of Litigation. Attorney Eichner has extensive experience in litigating civil rights matters, including cases involving special education, employment discrimination and public accommodations discrimination. Notable cases include: *Rundle v. Humane Society*, 12 FEP 444 (E.D. Mo. (1975) (Title VII sex discrimination suit); *St. Louis DDTC Parents' Assoc. v. Mallory*, 591 F. Supp. 1416 (W.D. Mo. 1984), aff'd 767 F.2d 518 (8th Cir. 1985); *R.W.T. v. Hon. D.E. Dalton*, 712 F.2d 1225 (8th Cir. 1983); and *Commonwealth v. Adams*, 416 Mass. 558 (1993) (expanding the application of the Massachusetts Civil Rights Act to new issues, including police misconduct). At DLC, Attorney Eichner was lead counsel in the series of structured negotiations with the area's three largest banks, (*Fleet, Sovereign, and Citizen's*), which resulted in agreements granting full access to banking services for individuals who are blind or have low vision, co-counsel in the successful structured negotiations with the streaming service *Hulu*<sup>1</sup> resulting in the provision of audio description tracks for streaming content, and co-counseled a successful stadium accessible seating lawsuit in federal court (*Berry v. Lowell*, 2003 WL 22050772

(D.Mass. 2003). Attorney Eichner has also authored numerous publications on disability rights and trained attorneys, advocates and individuals both locally and nationally on disability rights.

9. In addition to Attorneys Murphy and Eichner, DLC's Executive Director, Director of Litigation, and Director of Advocacy, as well as administrative staff and interns have assisted with strategy discussions, legal research, document reviews and fact development relevant to the demand letter and resulting Consent Decree. However, DLC has chosen not to request reimbursement for their time.

10. The following descriptions of the work performed on the Plaintiffs' behalf represent the actual number of hours recorded on daily timekeeping records. Each DLC attorney contemporaneously recorded his time to the 1/10<sup>th</sup> of an hour, or 6-minute increments, for all activities, regardless of whether the activity involves litigation or will be deemed compensable at some later date. The time requested includes only time spent on tasks directly related to this litigation, non-duplicative tasks, and work necessary to obtain the favorable result of this case, and excludes time spent on tasks that could be considered inefficient or unnecessary, and does not represent time spent by individuals noted in Paragraph 9, above other than Attorneys Murphy and Eichner.

11. DLC has long been aware of difficulties faced by individuals with disabilities in navigating the City of Boston's pedestrian right of way through both complaints and observation. However, unlike the work done by an individual lawyer for an individual client, representing a class of thousands of individuals with mobility disabilities to enforce federal and state accessibility standards is necessarily complex and time consuming, and our limited resources, combined with our broad federal mandate, have combined to inhibit our ability to take on a case of this magnitude until forming a partnership with our co-counsel.

12. DLC attorneys have been actively involved on all aspects of this case since its inception. The following is a brief summary of the work conducted from March 2017 to the present by the DLC attorneys representing the class.

13. Prior to sending the City of Boston (hereinafter “the City”) a demand letter, we conducted intensive fact development with co-counsel, including requesting and reviewing current and historic public records regarding curb ramps and verified non-compliant ramps by conducting on-site assessments and developing data for the Microsoft Access database that was created specifically for this matter. We conducted legal research and reviewed prior curb ramp cases and settlements. As local counsel in this matter, we handled all research associated with First Circuit case law and local U.S. District Court rules.

14. DLC conducted extensive outreach to potential plaintiffs and class representatives to gather and document facts and personal experiences regarding the impact of the City’s failure to comply with federal and state law with regard to its pedestrian right of way and access to the City’s programs, services and activities. Notably, DLC served as the primary contact for the named Plaintiffs and continuously kept them apprised of developments in the case and elicited feedback regarding the status of negotiations.

15. After conducting this fact development, DLC worked closely with Plaintiffs and co-counsel to document our concerns regarding the City’s lack of accessible curb ramps in a detailed demand letter and invitation to the City to engage in structured negotiations.

16. After documenting the City’s lack of compliance and participating in conference calls with opposing counsel, we engaged in structured settlement negotiations with the City for nearly three years to agree on and develop a Consent Decree and reasonable compliance plan.

17. Throughout the structured negotiations process, we participated in numerous in-

person meetings and conference calls, exchanged written and electronic communications, and requested, exchanged and analyzed a vast amount of relevant information about the City's policies, structure, practices, finances, design and construction standards and other protocols. We also provided input into the City's proposal for surveying the existing pedestrian right of way. We used the factual information gathered to prepare for and attend each of the structured negotiation settlement meetings. We also provided input into the numerous draft term sheets and Consent Decree documents prepared and exchanged with counsel for the City throughout the negotiations.

18. DLC attorneys collaborated with co-counsel to draft the pleadings in this matter, including the Complaint, Motion for Preliminary Approval, and Plaintiffs' Declarations. We also handled the filing of case opening pleadings and *pro hac vice* motions. We also took part in the drafting of the Class Notice and played a lead role in the research and development associated with identifying Notice of Settlement recipients.

19. Attached hereto as Exhibit A and incorporated herein by reference is a true and correct copy of DLC's time records on this matter through August 25, 2021, for which DLC is seeking compensation.

20. I have reviewed DLC's billing records on an entry-by-entry basis to exercise billing judgment and excise inefficient or duplicative work, clerical entries, work performed by the individuals identified in Paragraph 9 above, and other billing entries that are otherwise inadequate or non-compensable. This reduced the overall lodestar by almost 10%.

21. DLC is requesting its regular billing rates to calculate fees for this matter, which are based on reasonable rates established exclusively for legal services organizations in Massachusetts by the Massachusetts Law Reform Institute (MLRI), rather than the prevailing

rates for private law firms. DLC's rates have recently been approved by courts in this jurisdiction, including in *NAD et al. v. Harvard University*, No. 3:15-cv-30023-KAR (Feb. 26, 2020) (ECF No. 218) and *NAD et al. v. Massachusetts Institute of Technology*, No. 3:15-cv-30024-KAR (Jul. 21, 2020) (ECF No. 217).

22. The following table accurately sets forth the timekeepers at DLC who worked on this matter; their graduation dates; their hourly rates that we are seeking; and the number of hours that they worked, after the exercise of billing judgment:

Name	Position	Years of experience/graduation year	Hours	Rate	Total
Stanley Eichner	Director of Litigation	45 years/1974	26.7	\$575	\$15,352.50
Thomas Murphy	Senior Attorney	25 years/1995	170.9	\$500	\$85,450.00
<b>DLC Lodestar</b>					<b>\$ 100,802.50</b>

23. The above figures do not include time that I will continue to incur over the next two months through the final approval of the Consent Decree. I estimate that I will spend an additional 8 hours on such work.

24. DLC also expended a total of \$702.00 in reasonable costs in the prosecution of this case which consists of expenditures for court filing fees. DLC's costs are minimal given that the parties engaged in structured negotiations in order to achieve a result which will benefit thousands of individuals with mobility disabilities. Attached hereto as Exhibit B and incorporated herein by reference is a true and accurate accounting of DLC's expenses in this matter through August 25, 2021 for which DLC is seeking compensation.

25. DLC has not received any compensation to date for its work on this case. Any compensation DLC receives in this case will be dependent on the award of attorneys'



fees by this Court. None of the fees or costs paid to DLC will directly benefit any of the DLC attorneys who worked on the case. Instead, all fees and costs are distributed back into the programs that fronted the costs to begin with in order to fund future work in fulfillment of our mission and responsibilities as the Protection and Advocacy system for Massachusetts.

26. All expenses and costs incurred were necessary for the negotiation and litigation of Plaintiff's claims, and are appropriate given the scope and complexity of this matter. A true and correct itemization of the costs and expenses for which DLC is seeking reimbursement is attached hereto as Exhibit B and incorporated herein by reference.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this Declaration was executed this 26th day of August, 2021, in Northampton, Massachusetts.



Thomas P. Murphy  
BBO No. 630527  
Disability Law Center, Inc.  
32 Industrial Drive East  
Northampton, MA 01060

*Attorney for Plaintiff and the Plaintiff Class*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (“NEF”) and paper copies will be sent to those indicated on the NEF as non-registered participants on August 30, 2021.

/s/ Raymond Wendell

Raymond Wendell